

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

05-10 (L), 05-11
US v. Richard Stitt
(Jackson)

05-1651
Martha Jane Perry v. Mynu Coals Inc

05-4481
US v. Calvin Smoot
(Currie)

05-1366
Combs-Burge v. Rumsfeld
(Williams)

NATURE OF CASE

HABEAS CORPUS. Challenge to capital conviction and sentence based on denial of conflict-free counsel when attorney misrepresented his experience and failed to differentiate between money to be used for investigative expenses and attorney's fees.

BLACK LUNG BENEFITS. Whether ALJ's conclusion that Perry did not suffer from complicated pneumoconiosis is supported by substantial evidence.
15 mins. per side

SENTENCING GUIDELINES. Whether the district court erred in finding that defendant suborned perjury and enhancing his sentence two levels for obstruction of justice; other issues.

TITLE VII. Whether appellant failed to forecast sufficient evidence of discrimination and retaliation based on race and to rebut employer's non-discriminatory reasons for her demotion.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

TUESDAY, JANUARY 31, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

05-14
Buckner v. Polk
(Voorhees)

05-1134
Lyle v. County of Fairfax VA
(Hilton)

04-1601
Eastern Associated v. Wiles

NATURE OF CASE

HABEAS CORPUS. Challenge to denial of relief in capital case asserting actual innocence and raising claims of ineffective assistance of counsel and improper use of defendant's silence in prosecutor's oral argument.

PUBLIC EMPLOYMENT. Challenge to summary judgment on discrimination, retaliation and overtime claims.

BLACK LUNG BENEFITS. Whether the Doris Coal presumption is applicable to a claim for survivor's benefits; whether pneumoconiosis caused or contributed to Mr. Wiles's death.
15 mins. per side

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

TUESDAY, JANUARY 31, 2006

REVD 1/18/06

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1160

Vera Chawla v. Transamerica Occiden
(Hilton)

INSURANCE. Propriety of district court's order granting
summary judgment to insurer for rescision of life insurance
policy; numerous issues.

05-1226

Travelers Property v. Liberty Mutual Ins
(Nickerson)

INSURANCE. Whether there was a right of subrogation for
defense and settlement of underlying action.

04-4969

US v. Samuel Alvarado
(Lee)

SIXTH AMENDMENT. Whether defendant's invocation of his
right to counsel in state prosecution barred interrogation
in subsequent federal prosecution; other issues.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

TUESDAY, JANUARY 31, 2006

REVD 1/30/06

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4304

US v. Donald Davenport
(Quarles)

SENTENCING GUIDELINES. Whether Rule 32, requiring notice of intent to depart upward from guideline range, is affected by United States v. Booker; reasonableness of sentence above the guideline range; other issues.

05-1145

Mason v. Wyeth Inc
(Williams)

CIVIL. Whether the district court properly dismissed appellant's claims under the Americans with Disabilities Act and claim of intentional infliction of emotional distress.

05-1714

Greene v. A Duie Pyle Inc
(Motz)

TITLE VII. Whether plaintiff's subjective belief that employer was violating Title VII was objectively reasonable under the facts of this case.

05-4138

US v. Everett Robinson
(Messitte)

CRIMINAL LAW & PROCEDURE. Whether redaction of informant contact sheets denied defendant his rights under the Confrontation Clause; suppression of evidence; sufficiency of evidence.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D(Tweed Carpet)
9:30 a.m.

TUESDAY, JANUARY 31, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-16

Lenz v. True
(Jones)

HABEAS CORPUS. Challenge to denial of relief in capital case raising claims of improper jury influence, ineffective assistance of counsel, and denial of right to confront witnesses.

05-1149

American Modern Home v. Reeds at Bayview
(Quarles)

INSURANCE. Challenge to summary judgment in declaratory judgment action determining that insurers had no duty to defend insureds or to indemnify class action settlement.

05-4378

US v. Artez Lamont Johnson
(Flanagan)

CRIMINAL LAW & PROCEDURE. Whether sentence imposed after United States v. Booker, 125 S. Ct. 738 (2005), was reasonable.

05-4228

US v. James E. Simms
(Blake)

CRIMINAL LAW & PROCEDURE. Whether use of a state application for statement of charges to determine if prior conviction was a crime of violence violated Shepard v. United States, 125 S. Ct. 1254 (2005).

PANEL I

COURTROOM ONE

Courthouse Room 412 (Red Carpet)

** 9:00 a.m. **

WEDNESDAY, FEBRUARY 1, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

99-4665 (L), 05-4232 05-4233 05-4234 99-4666 99-4667

US v. Calvin Douglas Dyess
(Haden)

CRIMINAL LAW & PROCEDURE. Challenge to district court's denial of motions to withdraw guilty plea and dismiss indictment based on government misconduct; sentencing challenges.

05-1240

Luh v. J.M. Huber Corp
(Blake)

TITLE VII. Propriety of summary judgment in favor of employer in civil action alleging race and gender discrimination.

04-2566

Kloth v. Microsoft Corp
(Motz)

ANTITRUST. Whether money damages and injunctive relief claims were properly dismissed for failure to state a claim upon which relief may be granted.

05-1466

1335 Piccard LLC v. Natl Fire Ins Co
(Williams)

INSURANCE. Whether sewer back up coverage included loss of rental income.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

WEDNESDAY, FEBRUARY 1, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

05-1144 (L), 05-1399
Goldstein v. Moatz
(Brinkema)

05-1556
Ingle v. Yelton
(Thornburg)

05-1276
Nivens v. Gilchrist
(Mullen)

NATURE OF CASE

ADMINISTRATIVE AGENCY. Challenge to dismissal as moot of action against agency officials for their investigative methods; challenge to denial of EAJA fees.

CIVIL RIGHTS. Challenge to qualified immunity to police officers in shooting death; denial of discovery; denial of motion to alter or amend based on alleged videotape of shooting.

FEDERAL JURISDICTION. Whether district court abused its discretion in dismissing double jeopardy challenge with prejudice on the ground of abstention.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

WEDNESDAY, FEBRUARY 1, 2006

REVD 1/18/06

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1514

Alba v. Merrill Lynch & Co
(Hilton)

EMPLOYMENT. Challenge to summary judgment in action
alleging age discrimination, breach of contract and unjust
enrichment.

05-1182

NLRB v. Kentucky Tennessee

LABOR. Whether employer threatened employees, created the
impression of surveillance of union activities, reduced
employee's work hours and discharged him for supporting the
union.

05-1217 (L), 05-1281

Morris v. Wachovia Securities
(Payne)

ATTORNEY SANCTIONS. Challenge to the district court's
failure to impose sanctions for violation of Rule 11 under
the Private Securities Litigation Reform Act.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D(Tweed Carpet)
9:30 a.m.

WEDNESDAY, FEBRUARY 1, 2006

REVD 1/10/06

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-406

In Re: Williams

HABEAS/SECTION 2244. Whether Section 2254 petition after new direct appeal is a "second or successive" petition under Section 2244(b).

05-1060

Schwam v. XO Communications
(Lee)

CIVIL. Whether appellant was entitled to post-termination commissions.

05-1078 (L), 05-1691

MD State Conf NAACP v. MD State Police
(Grimm)

STATUTE OF LIMITATIONS. Whether putative class members' individual claims are time barred and not saved by tolling during pendency of class action.

05-1521

Suter v. US
(Mullen)

FEDERAL TORT CLAIMS ACT. Challenge to dismissal of action alleging undercover government agent actively participated in fraudulent investment scheme resulting in claimants' losses.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

THURSDAY, FEBRUARY 2, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-2118

Gregory v. Finova Capital Corp
(Anderson)

CLASS ACTION. Challenge to district court's certification of class under Sections 11 and 15 of Securities Act; other issues.

05-1148

Patten v. Signator Ins.
(Legg)

ARBITRATION. Whether district court improperly denied appellant's motion to vacate arbitration award based upon "implied notice" requirement.

05-1582

Pence v. Tenneco Auto Oper Co
(Wilson)

EMPLOYMENT. Challenge to summary judgment in action alleging retaliation and termination in violation of ADA and FMLA.

05-1097

Salt Institute v. Leavitt, Sec
(Lee)

INFORMATION QUALITY ACT. Whether Act provides a mechanism for obtaining grant recipient's data from federal agency.

PANEL II
COURTROOM TWO
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9:30 a.m.

THURSDAY, FEBRUARY 2, 2006

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

NATURE OF CASE

05-1128

Ranney v. Nelson
(Hilton)

CIVIL. Whether district court erred in construing claims as personal injury rather than injury to property and dismissing claims as barred by state's statute of limitations; other issues.

05-1159

Duncan v. Duncan
(Lee)

BANKRUPTCY. Whether state wrongful death monetary judgment is non-dischargeable as arising out of intentional injury.

05-4224

US v. Quiana Hampton
(Perry)

SENTENCING. Challenge to downward departure based on defendant's status as sole custodial parent and lack of injury in conviction for possession of firearm by felon.
15 mins. per side

05-1090

P R Chunk Inc v. Martin Marietta
(Boyle)

CONTRACTS. Whether plaintiffs were entitled to minimum royalties as a matter of law; whether defendants were the prevailing parties for purpose of awarding costs.

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THURSDAY, FEBRUARY 2, 2006

UNITED STATES COURT OF APPEALS
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(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4242

US v. Jonathan Johnson
(Perry)

SENTENCING. Whether defendant's sentence was unreasonably low.
15 mins. per side

05-1268

Belton v. City of Charlotte
(Keesler)

PUBLIC EMPLOYMENT. Challenge to summary judgment in action alleging racial discrimination through disparate treatment, failure to promote and retaliation against city fire chief.

05-1450

Frederick v. City of Charlotte
(Keesler)

PUBLIC EMPLOYMENT. Challenge to summary judgment in action alleging disparate treatment, hostile environment and retaliation against city fire chief.

05-1459

Mackey v. City of Charlotte
(Keesler)

PUBLIC EMPLOYMENT. Challenge to summary judgment in action alleging racial discrimination through failure to promote, discriminatory remarks and disparate treatment of city fire chief.

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COURTROOM FOUR
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9:30 a.m.

THURSDAY, FEBRUARY 2, 2006

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

04-4745
US v. Andres Laurent
(Williams)

04-5062
US v. Daniel L. Thompson
(Brinkema)

NATURE OF CASE

CRIMINAL LAW & PROCEDURE. Whether the trial court may submit a document to the jury that purports to be self-authenticating without also submitting those portions of the document that serve as self-authentication; other issues.

CRIMINAL LAW & PROCEDURE. Application of Controlled Substances Act to physicians for prescribing drugs to Internet customers.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
8:30 a.m.

FRIDAY, FEBRUARY 3, 2006

REVD 1/13/06

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

05-8
Billings v. Polk
(Bullock)

HABEAS CORPUS. Numerous issues raised on appeal from district court denial of habeas corpus relief in capital case.

05-4142
US v. Joseph Junior Revels
(Fox)

SENTENCING GUIDELINES. Whether Revels' sentence violated the Sixth Amendment under United States v. Booker, 125 S. Ct. 738 (2005)
15 mins. per side

04-5048 (L), 04-5049 04-5050 04-5051 04-5052
US v. Kevin Batts
(Spencer)

CRIMINAL LAW & PROCEDURE. Whether sufficient evidence existed to establish an enterprise under RICO; whether admission of expert testimony was error; other issues.

04-4794 (L), 04-4941 04-4980 05-4004
US v. M. Nicholson, Sr.
(Williams)

CRIMINAL LAW & PROCEDURE. Multiple evidentiary and sentencing issues stemming from drug trafficking convictions.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
8:30 a.m.

FRIDAY, FEBRUARY 3, 2006

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(01/31/2006 - 02/03/2006 Session)

NUMBER AND STYLE

NATURE OF CASE

04-4677

US v. John Singleton
(Currie)

CRIMINAL LAW & PROCEDURE. Whether evidence was sufficient to support jurisdictional element of Hobbs Act conviction; sentencing issues.

05-4112

US v. Mark A. Reynolds
(Faber)

CRIMINAL LAW & PROCEDURE. Propriety of admission of evidence of prior criminal conduct and of exclusion of evidence under Fed. R. Evid. 609(b); reasonableness of five-level upward departure at sentencing; sufficiency of evidence.

04-5126

US v. Joseph E. Williams
(Brinkema)

CRIMINAL LAW & PROCEDURE. Admissibility of evidence; Booker violation; other issues.

03-4458 (L), 03-4459 03-4543 03-4641 03-4673

US v. James E. Gross, Jr.
(Motz)

CRIMINAL LAW & PROCEDURE. Various issues related to racketeering convictions; whether sentences are unconstitutional under Blakely.

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FRIDAY, FEBRUARY 3, 2006

UNITED STATES COURT OF APPEALS
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NUMBER AND STYLE

03-4511 (L), 03-4518 03-4519
US v. Owen Robinson
(Legg)

04-4108
US v. Anthony Singleton
(Bennett)

05-1108
Elm Grove Coal Co v. DOWCP

03-4701
US v. Keith R. Allen, Jr.
(Faber)

NATURE OF CASE

CRIMINAL LAW & PROCEDURE. Whether the sentence should be vacated and remanded for resentencing in light of United States v. Booker, 125 S. Ct. 738 (2005); related issues.

CRIMINAL/SENTENCING GUIDELINES. Whether defendant's judicially-enhanced sentence violated Booker; other issues.

BLACK LUNG. Whether 20 C.F.R. Section 725.414, which limits evidence that may be considered, is invalid under BLBA, APA, and Circuit precedent; other issues.

SENTENCING GUIDELINES. Whether career offender sentence was error under United States v. Booker, 125 S. Ct. 738 (2005), and Shepard v. United States, 125 S. Ct. 1254 (2005); whether district court erred in finding predicate felony convictions.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D(Tweed Carpet)
8:30 a.m.

FRIDAY, FEBRUARY 3, 2006